

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

Ethical Standards for Administrative Law Judges

November 1996

California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739

NOTE

This report includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were already operative, since their primary purpose is to explain the law as it will exist to those who will have occasion to use it after it is operative.

Cite this report as *Ethical Standards for Administrative Law Judges*, 26 Cal. L. Revision Comm'n Reports 335 (1996).

STATE OF CALIFORNIA

PETE WILSON, Governor

CALIFORNIA LAW REVISION COMMISSION

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November 15, 1996

To: The Honorable Pete Wilson
Governor of California, and
The Legislature of California

This recommendation proposes to adapt the California Code of Judicial Ethics (1996) to govern the hearing and nonhearing conduct of state administrative law judges. The ethical standards would apply in all proceedings conducted by state administrative law judges, including state adjudicative proceedings that are otherwise exempt from the Administrative Procedure Act. State hearing officers other than administrative law judges would not generally be covered by the new ethical standards, but general statutes governing conduct of state employees would continue to apply to them. A violation of the new ethical standards would be grounds for disciplinary action against the administrative law judge.

This recommendation is submitted pursuant to Resolution Chapter 38 of the Statutes of 1996.

Respectfully submitted,

Allan L. Fink
Chairperson

ETHICAL STANDARDS FOR ADMINISTRATIVE LAW JUDGES

California has led the nation in developing a corps of professional administrative law judges to conduct state administrative adjudication proceedings. California's landmark 1945 Administrative Procedure Act included a central panel of hearing officers, designed to provide competent, professional hearing services for a variety of state agencies.¹ In addition, major state agencies that conduct their own administrative hearings have developed in-house divisions of administrative law judges devoted to the adjudication function.²

It is important for the integrity of the state's administrative adjudication system that its administrative law judges adhere to high ethical standards of conduct. Administrative law judges, like all other state employees, are currently subject to disciplinary action on such grounds as:³

- Incompetency
- Inexcusable neglect of duty
- Dishonesty
- Discourteous treatment of the public or other employees

1. For a description of the California central panel system and its history, see *Administrative Adjudication by State Agencies*, 25 Cal. L. Revision Comm'n Reports 55, 93-98 (1995).

2. The Law Revision Commission estimates that at least 95% of the state's administrative law judges and hearing officers are employed by the adjudicating agencies rather than the Office of Administrative Hearings. Each of the following major adjudicative agencies employs a greater number of administrative law judges or hearing officers than the total number employed by the Office of Administrative Hearings: Board of Prison Terms, Department of Industrial Relations, Department of Social Services, Public Utilities Commission, Unemployment Insurance Appeals Board, Workers' Compensation Appeals Board.

3. Gov't Code § 19572.

- Engaging in an employment, activity, or enterprise that is inconsistent, incompatible, or in conflict with the duties of the employee
- Unlawful discrimination
- Other failure of good behavior

However, these grounds for disciplinary action are not well-adapted to the circumstances of adjudicative proceedings and administrative law judges.

At least one body of California hearing officers is expressly subject to an adjudicative code of ethics. Workers' compensation referees must subscribe to the California Code of Judicial Conduct and may not otherwise, directly or indirectly, engage in conduct contrary to that code.⁴ The canons of the California Code of Judicial Conduct admonish a judge to uphold the integrity and independence of the judiciary, to avoid impropriety and the appearance of impropriety in all of the judge's activities, to perform the duties of judicial office impartially and diligently, to conduct the judge's quasi-judicial and other extra-judicial activities to minimize the risk of conflict with judicial obligations, and to refrain from inappropriate political activity.⁵

Some of the provisions of the Code of Judicial Conduct are not suited to the circumstances of administrative adjudication. Efforts have been made at the national level to adapt judicial codes to govern the conduct of administrative law judges and provide guidance to them in establishing and maintaining high standards of judicial and personal conduct. These include the American Bar Association's Model Codes of Judicial Conduct for Federal Administrative Law Judges and State Administrative Law Judges, the National Association of Administrative Law Judges' Model Code of Judicial Conduct

4. Lab. Code § 123.6.

5. California Judges Association, California Code of Judicial Conduct, Canons 1-5 (1992).

for State Administrative Law Judges, and the Model Code of Judicial Conduct for State Central Panel Administrative Law Judges.

To help maintain the competence and integrity of California's system of administrative adjudication, the Law Revision Commission recommends that California adopt ethical standards for administrative law judges. Although national model codes are available, the Commission recommends that the California standards be based on the new California Code of Judicial Ethics, promulgated by the California Supreme Court effective January 15, 1996, as revised effective April 15, 1996.⁶

The California Code of Judicial Ethics is sanctioned by Article VI, Section 18(m) of the California Constitution. It replaces the California Code of Judicial Conduct, and has the force of law. By adapting the judicial code to the circumstances of administrative adjudication, we can ensure that the same ethical standards will apply throughout state adjudication, both judicial and administrative. Moreover, uniform judicial and administrative ethical standards will enable each system to benefit from the other's experience under it.

The California Code of Judicial Ethics should generally apply to state administrative law judges. However, the following provisions of the Code, which may be appropriate for judges, are inappropriate as applied to administrative law judges:

- Canon 3B(7) provides rules for *ex parte* communications; the Administrative Procedure Act already covers the matter in some detail.⁷

6. A copy of the California Code of Judicial Ethics is attached to this recommendation as an Appendix. See *infra* pp. 351-67.

7. Gov't Code §§ 11430.10-11430.70 (operative July 1, 1997), 11513.5 (operative until July 1, 1997).

- Canon 3B(10) relates to juries, which are not used in administrative adjudication.
- Canon 4C limits the right to engage in governmental, civic, and charitable activities; however, administrative law judges are executive branch rather than judicial branch employees, and the range of issues that may come before them is narrowly circumscribed.
- Canons 4E(1), 4F, and 4G prohibit fiduciary, activities, private employment in alternative dispute resolution or the practice of law; these matters are the subject of each employing agency's incompatible activity rules adopted pursuant to Government Code Section 19990.
- Canons 5A-5D contain specific restrictions on political activities of judges that have limited relevance to administrative law judges; Canon 5's general injunction to "avoid political activity that may create the appearance of political bias or impropriety" is sufficient.
- Canon 6 concerns enforcement of and compliance with the code of ethics; adaptation to executive branch as opposed to judicial branch implementation and enforcement is required.

Violation of the ethical standards should be grounds for disciplinary action against an offending administrative law judge. This is consistent with existing law, which provides that "failure of good behavior either during or outside of duty hours which is of such a nature that it causes discredit to the appointing authority or the person's employment" is grounds for discipline of a state employee.⁸ The proposed Administrative Adjudication Code of Ethics would in effect define "failure of good behavior" for administrative law judges.

The Law Revision Commission would not apply the ethical standards to a presiding officer other than an administrative law judge, at present. Application of the standards to other hearing personnel is problematic since the presiding officer may be part-time or a lay hearing officer, or even the agency

8. Gov't Code § 19572(t).

head.⁹ However, general principles of appropriate conduct would still apply to non-administrative law judge hearing personnel.¹⁰ In addition, an agency could by regulation make the Administrative Adjudication Code of Ethics applicable to its presiding officers.¹¹

The administrative adjudication provisions of the Administrative Procedure Act do not govern certain state agency hearings.¹² Nonetheless, the proposed Administrative Adjudication Code of Ethics should apply to administrative law judges who preside in these hearings. The ethical integrity of a state administrative law judge is independent of the details of the particular hearing procedure the judge follows.

9. *Cf.* Gov't Code § 11405.80 ("presiding officer" defined), operative July 1, 1997.

10. See *supra* text accompanying note 3.

11. See Gov't Code § 11410.40 (election to apply administrative adjudication provisions), operative July 1, 1997.

12. See, e.g., Gov't Code § 15609.5 (State Board of Equalization), operative July 1, 1997; Pub. Util. Code § 1701 (Public Utilities Commission), operative July 1, 1997.

PROPOSED LEGISLATION

Gov't Code §§ 11475.10-11475.70 (added). Administrative Adjudication Code of Ethics

SECTION 1. Article 16 (commencing with Section 11475.10) is added to Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code, to read:

Article 16. Administrative Adjudication Code of Ethics

§ 11475.10. Application of article

11475.10. (a) This article applies to all of the following persons:

(1) An administrative law judge. As used in this subdivision, "administrative law judge" means an incumbent of that position as defined by the State Personnel Board for each class specification for Administrative Law Judge.

(2) A presiding officer to which this article is made applicable by statute or regulation.

(b) This article applies notwithstanding a general provision that this chapter does not apply to some or all of a state agency's adjudicative proceedings.

Comment. Section 11475.10 limits application of the Administrative Adjudication Code of Ethics to specified classes of hearing officers. See Section 11475.20 (application of Code of Judicial Ethics).

Subdivision (a)(1) includes not only an administrative law judge who presides at a hearing but also a supervisory or management level administrative law judge or chief administrative law judge, whose function may relate directly or indirectly to the adjudicative process.

This article does not apply to an agency head or hearing officer who presides in an administrative adjudication but who is not an administrative law judge, absent a special statute or regulation. See subdivision (a)(2). However, other ethical considerations apply to the hearing and nonhearing conduct of state agency presiding officers. See, e.g., Section 19572 (cause for discipline).

The Administrative Adjudication Code of Ethics is made applicable by statute to workers' compensation referees. Lab. Code § 123.6. An agency may make the Administrative Adjudication Code of Ethics applicable to its non-administrative law judge presiding officers by regulation where this article would not otherwise apply. See Section 11410.40 (election to apply administrative adjudication provisions); see also Section 11405.80 ("presiding officer" defined).

Under subdivision (b), the Administrative Adjudication Code of Ethics applies to an administrative law judge even though the proceedings in which the administrative law judge presides might otherwise be statutorily exempt from this chapter. See, e.g., Section 15609.5 (State Board of Equalization); Pub. Util. Code § 1701 (Public Utilities Commission).

§ 11475.20. Application of Code of Judicial Ethics

11475.20. Except as otherwise provided in this article, the Code of Judicial Ethics adopted by the Supreme Court pursuant to subdivision (m) of Section 18 of Article VI of the Constitution for the conduct of judges governs the hearing and nonhearing conduct of an administrative law judge or other presiding officer to which this article applies.

Comment. Section 11475.20 applies the Code of Judicial Ethics in administrative adjudication. For the persons to which this article applies, see Section 11475.10 (application of article).

The Code of Judicial Ethics adopted by the Supreme Court is effective January 15, 1996. The incorporation by reference includes subsequent amendments and additions to the Code. Section 9.

It is intended that interpretations of the Code of Judicial Ethics in its application to the judicial system, whether made by court rule or decision, should also be applied in administrative adjudication, to the extent relevant to the circumstances of administrative adjudication. *Cf.* Section 11475.40 (provisions of Code excepted from application).

The Code of Judicial Ethics supplements other standards applicable to conduct of an administrative law judge, including disqualification for bias (Section 11425.40) and disciplinary action for failure of good behavior (Section 19572). See also Section 11475.50 & Comment (enforcement).

§ 11475.30. Terminology

11475.30. For the purpose of this article, the following terms used in the Code of Judicial Ethics have the meanings provided in this section:

(a) “Appeal” means administrative review.

(b) “Court” means the agency conducting an adjudicative proceeding.

(c) “Judge” means administrative law judge or other presiding officer to which this article applies; related terms, including “judicial,” “judiciary,” and “justice,” mean comparable concepts in administrative adjudication.

(d) “Law” includes regulation and precedent decision.

Comment. Section 11475.30 provides a general guide to conversion of terminology in the Code of Judicial Ethics for application to administrative adjudication. It is intended to be applied in a manner to effectuate that general purpose without requiring strict or grammatically precise rigidity in the conversion. Likewise, terms not specified in this section should be converted in an appropriate manner to effectuate the general intent of this statute to apply the Code of Judicial Ethics to the circumstances of administrative adjudication.

§ 11475.40. Provisions of Code excepted from application

11475.40. The following provisions of the Code of Judicial Ethics do not apply under this article:

(a) Canon 3B(7), to the extent it relates to ex parte communications.

(b) Canon 3B(10).

(c) Canon 4C.

(d) Canons 4E(1), 4F, and 4G.

(e) Canons 5A-5D. The introductory portion of Canon 5 applies under this article notwithstanding Chapter 9.5 (commencing with Section 3201) of Division 4 of Title 1, relating to political activities of public employees.

(f) Canon 6.

Comment. Section 11475.40 adapts the Code of Judicial Ethics for application to administrative law judges. Some provisions of the Code of

Judicial Ethics, although not excepted by this section, may be minimally relevant to an administrative law judge. See, e.g., Canon 3C(4) (administrative responsibilities).

Subdivision (a) of Section 11475.40 excepts the portion of Canon 3B(7) relating to ex parte communications. It reflects the fact that special provisions, and not the Code of Judicial Ethics, govern ex parte communications in administrative adjudication. See, e.g., Article 7 (commencing with Section 11430.10).

Subdivision (b) excepts Canon 3B(10), relating to juries. It reflects the fact that juries are not used in administrative adjudication.

Subdivision (c) excepts Canon 4C, relating to governmental, civic, or charitable activities. An administrative law judge is not precluded from engaging in activities of this type, except to the extent the activities may conflict with general limitations on the administrative law judge's conduct. See, e.g., Canon 4A (extrajudicial activities in general).

Subdivision (d) excepts Canons 4E(1), 4F, and 4G, relating to fiduciary activities, private employment in alternative dispute resolution, and the practice of law. These matters are the subject of the employing agency's incompatible activity statement pursuant to Section 19990.

Subdivision (e) applies the introductory portion of Canon 5 to an administrative law judge or other presiding officer, but not Canons 5A-5D. Under this provision an administrative law judge or other presiding officer must avoid political activity that may create the appearance of political bias or impropriety. This would preclude participation in political activity related to an issue that may come before the administrative law judge or other presiding officer.

Subdivision (e) limits the political activities of administrative law judges even though other public employees might be able to participate in those activities under the *Hatch Act* (Sections 3201-3209). This subdivision is not intended to preclude an administrative law judge or other presiding officer to which this article applies from appearing at a public hearing or officially consulting with an executive or legislative body or public official in matters concerning the judge's private economic or personal interests, or to otherwise engage in political activities relating to salary, benefits, and working conditions. *Cf.* Section 11475.70 (collective bargaining rights not affected).

Subdivision (f) excepts Canon 6, which is superseded by Sections 11475.50 (enforcement) and 11475.60 (compliance).

§ 11475.50. Enforcement

11475.50. (a) An administrative law judge or other presiding officer to which this article applies shall comply with the applicable provisions of the Code of Judicial Ethics.

(b) A violation of an applicable provision of the Code of Judicial Ethics by an administrative law judge or other presiding officer to which this article applies is cause for discipline by the employing agency pursuant to Section 19572.

Comment. Section 11475.50 supersedes Canon 6A of the Code of Judicial Ethics. The compliance requirement is not precatory in administrative adjudication, but is mandatory.

Appropriate discipline under subdivision (b) is the responsibility of the agency that employs the administrative law judge. Thus if an administrative law judge employed by the Office of Administrative Hearings violates the code of ethics in a hearing conducted for another agency, the Office of Administrative Hearings is the disciplining entity, and not the other agency. An agency may apply appropriate disciplinary procedures. See, e.g., 8 Cal. Code Regs. §§ 9720.1-9723 (1996) (enforcement of ethical standards of workers' compensation referees). It should be noted that a person may also institute disciplinary proceedings directly before the State Personnel Board with the consent of the board. Gov't Code § 19583.5; 2 Cal. Code Regs. § 51.9 (1996).

A violation of the code of ethics by the administrative law judge is not per se grounds for disqualification, or reversal of a decision, of the administrative law judge. But the violation may be indicative of the administrative law judge's violation of other procedural requirements. See, e.g., Section 11425.40 (disqualification of presiding officer for bias, prejudice, or interest).

§ 11475.60. Compliance

11475.60. (a) Except as provided in subdivision (b), a person to whom this article becomes applicable shall comply immediately with all applicable provisions of the Code of Judicial Ethics.

(b) A person to whom this article becomes applicable shall comply with Canon 4D(2) of the Code of Judicial Ethics as soon as reasonably possible and shall do so in any event

within a period of one year after the article becomes applicable.

Comment. Section 11475.60 supersedes Canon 6F of the Code of Judicial Ethics.

§ 11475.70. Collective bargaining rights not affected

11475.70. Nothing in this article shall be construed or is intended to limit or affect the rights of an administrative law judge or other presiding officer under the Ralph C. Dills Act, Chapter 10.3 (commencing with Section 3512) of Division 4 of Title 1 of the Government Code.

Comment. Section 11475.70 makes clear that the Administrative Adjudication Code of Ethics is not intended to interfere with collective bargaining rights guaranteed state employees under the Ralph C. Dills Act. These include the right to form, join, and participate in activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations, to refuse to join or participate in the activities of employee organizations, or to represent themselves individually in their employment relations with the state. See Section 3515.

Lab. Code § 123.6 (amended). Workers' compensation referees

SEC. 2. Section 123.6 of the Labor Code is amended to read:

123.6. (a) All workers' compensation referees and settlement—conference—referees employed by the administrative director shall subscribe to the ~~California Code of Judicial Conduct adopted by the Conference of California Judges~~ *Administrative Adjudication Code of Ethics, Article 16 (commencing with Section 11475.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code*, and shall not otherwise, directly or indirectly, engage in conduct contrary to that code.

The administrative director shall adopt regulations to enforce this section. To the extent possible, the rules shall be consistent with the procedures established by the Commission on Judicial Performance for regulating the activities of state

judges, and, to the extent possible, with the gift, honoraria, and travel restrictions on legislators contained in the Political Reform Act of 1974.

(b) Honoraria or travel allowed by the administrative director or otherwise not prohibited by this section in connection with any public or private conference, convention, meeting, social event, or like gathering, the cost of which is significantly paid for by attorneys who practice before the board, may not be accepted unless the administrative director has provided prior approval in writing to the workers' compensation referee allowing him or her to accept those payments.

Comment. Section 123.6 is amended to reflect the fact that the California Code of Judicial Conduct adopted by the Conference of California Judges is superseded by the Code of Judicial Ethics adopted by the Supreme Court pursuant to subdivision (m) of Section 18 of Article VI of the Constitution. The Code of Judicial Ethics is adapted for administrative law judges by Government Code Sections 11475.10-11475.70 (administrative adjudication code of ethics).

The reference in subdivision (a) to settlement conference referees is deleted as obsolete; statutory authority for this classification no longer exists.

APPENDIX TO CALIFORNIA RULES OF COURT

DIVISION II

CALIFORNIA CODE OF JUDICIAL ETHICS

Amended by the Supreme Court of California
effective April 15, 1996

PREFACE

Formal standards of judicial conduct have existed for more than 50 years. The original Canons of Judicial Ethics promulgated by the American Bar Association were modified and adopted in 1949 for application in California by the Conference of California Judges (now the California Judges Association).

In 1969, the American Bar Association determined that current needs and problems warranted revision of the Canons. In the revision process, a special American Bar Association committee, headed by former California Chief Justice Roger Traynor, sought and considered the views of the bench and bar and other interested persons. The American Bar Association Code of Judicial Conduct was adopted by the House of Delegates of the American Bar Association August 16, 1972.

Effective January 5, 1975, the California Judges Association adopted a new California Code of Judicial Conduct adapted from the American Bar Association 1972 Model Code. The California code was recast in gender-neutral form in 1986.

In 1990, the American Bar Association Model Code was further revised after a lengthy study. The California Judges Association again reviewed the model code and adopted a revised California Code of Judicial Conduct on October 5, 1992.

Proposition 190 (amending Cal. Const., art. VI, § 18(m), effective March 1, 1995) created a new constitutional provision that states, "The Supreme Court shall make rules for the conduct of judges, both on and off the bench, and for judicial candidates [*] in the conduct of their campaigns. These rules shall be referred to as the Code of Judicial Ethics."

The Supreme Court formally adopted the 1992 Code of Judicial Conduct in March 1995, as a transitional measure pending further review.

The Supreme Court formally adopted the Code of Judicial Ethics effective January 15, 1996.

The Supreme Court formally adopted amendments to the Code of Judicial Ethics effective April 15, 1996. The *Advisory Committee Commentary* is published by the Supreme Court Advisory Committee on Judicial Ethics.¹

PREAMBLE

Our legal system is based on the principle that an independent, fair, and competent judiciary will interpret and apply the laws that govern us. The role of the judiciary is central to American concepts of justice and the rule of law. Intrinsic to this code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system. The judge is an arbiter of facts and law for the resolution of disputes and a highly visible member of government under the rule of law.

The Code of Judicial Ethics (“Code”) establishes standards for ethical conduct of judges on and off the bench and for candidates for judicial office. The Code consists of broad declarations called Canons, with subparts, and a Terminology section. Following each Canon is a Commentary section prepared by the Supreme Court Advisory Committee on Judicial Ethics. The Commentary, by explanation and example, provides guidance as to the purpose and meaning of the Canons. The Commentary does not constitute additional rules and should not be so construed. All members of the judiciary must comply with the Code. Compliance is required to preserve the integrity of the bench and to ensure the confidence of the public.

The Canons should be read together as a whole, and each provision should be construed in context and consistent with every

1. Law Revision Commission note: The Advisory Committee Commentary is not included in this Appendix. For additional guidance, reference should be made to the full text of the Code of Judicial Ethics with Advisory Committee Commentary.

other provision. They are to be applied in conformance with constitutional requirements, statutes, other court rules, and decisional law. Nothing in the Code shall either impair the essential independence of judges in making judicial decisions or provide a separate basis for civil liability or criminal prosecution.

The Code governs the conduct of judges and judicial candidates* and is binding upon them. Whether disciplinary action is appropriate, and the degree of discipline to be imposed, requires a reasoned application of the text and consideration of such factors as the seriousness of the transgression, whether there is a pattern of improper activity, and the effect of the improper activity on others or on the judicial system.

TERMINOLOGY

Terms explained below are noted with an asterisk (*) in the Canons where they appear. In addition, the Canons in which terms appear are cited after the explanation of each term below.

“Appropriate authority” denotes the authority with responsibility for initiation of the disciplinary process with respect to a violation to be reported. See Commentary to Canon 3D.

“Candidate.” A candidate is a person seeking election for or retention of judicial office by election. A person becomes a candidate for judicial office as soon as he or she makes a public announcement of candidacy, declares or files as a candidate with the election authority, or authorizes solicitation or acceptance of contributions or support. The term “candidate” has the same meaning when applied to a judge seeking election to nonjudicial office, unless on leave of absence. See Preamble and Canons 2B(3), the preliminary paragraph of 5, 5A, 5B, 5C, and 6E.

“Court personnel” does not include the lawyers in a proceeding before a judge. See Canons 3B(4), 3B(7)(b), 3B(9), and 3C(2).

“Fiduciary” includes such relationships as executor, administrator, trustee, and guardian. See Canons 4E, 6B, and 6F (*Commentary*).

“Law” denotes court rules as well as statutes, constitutional provisions, and decisional law. See Canons 1 (*Commentary*), 2A, 2C (*Commentary*), 3A, 3B(2), 3B(7), 3E, 4B (*Commentary*), 4C, 4D(46)(a)-(b), 4F, 4H, and 5D.

“Member of the judge’s family” denotes a spouse, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship. See Canons 2B(2), 4D(1) (*Commentary*), 4D(2), 4E, 4G (*Commentary*), and 5A.

“Member of the judge’s family residing in the judge’s household” denotes a spouse and those persons who reside in the judge’s household who are relatives of the judge including relatives by marriage, or persons with whom the judge maintains a close familial relationship. See Canons 4D(5) and 4D(6).

“Nonprofit youth organization” is any nonprofit corporation or association, not organized for the private gain of any person, whose purposes are irrevocably dedicated to benefiting and serving the interests of minors and which maintains its nonprofit status in accordance with applicable state and federal tax laws. See Canon 2C.

“Nonpublic information” denotes information that, by law, is not available to the public. Nonpublic information may include but is not limited to information that is sealed by statute or court order, impounded, or communicated in camera; and information offered in grand jury proceedings, presentencing reports, dependency cases, or psychiatric reports. See Canon 3B(11).

“Political organization” denotes a political party, political action committee, or other group, the principal purpose of which is to further the election or appointment of candidates to nonjudicial office. See Canon 5A.

“Temporary Judge.” A temporary judge is an active or inactive member of the bar who serves or expects to serve as a judge once, sporadically, or regularly on a part-time basis under a separate court appointment for each period of service or for each case heard. See Canons 4C(3)(d)(i), 6A, and 6D.

“Require.” Any Canon prescribing that a judge “require” certain conduct of others means that a judge is to exercise reasonable direction and control over the conduct of those persons subject to the judge’s direction and control. See Canons 3B(3), 3B(4), 3B(6), 3B(8) (*Commentary*), 3B(9), and 3C(2).

CANON 1

A JUDGE SHALL UPHOLD THE INTEGRITY AND INDEPENDENCE OF THE JUDICIARY

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved. The provisions of this Code are to be construed and applied to further that objective. A judicial decision or administrative act later determined to be incorrect legally is not itself a violation of this Code.

CANON 2

A JUDGE SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL OF THE JUDGE'S ACTIVITIES

A. Promoting Public Confidence

A judge shall respect and comply with the law* and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. Use of the Prestige of Judicial Office

(1) A judge shall not allow family, social, political, or other relationships to influence the judge's judicial conduct or judgment, nor shall a judge convey or permit others to convey the impression that any individual is in a special position to influence the judge.

(2) A judge shall not lend the prestige of judicial office to advance the pecuniary or personal interests of the judge or others; nor shall a judge testify voluntarily as a character witness. A judge shall not initiate communications with a sentencing judge or a probation or corrections officer, but may provide them with information for the record in response to an official request. A judge may initiate communications with a probation or corrections officer concerning a member of the judge's family,* provided the judge is not identified as a judge in the communication.

(3) A judge may respond to judicial selection inquiries, provide recommendations (including a general character reference, relating

to the evaluation of persons being considered for a judgeship) and otherwise participate in the process of judicial selection.

(4) A judge shall not use the judicial title in any written communication intended to advance the personal or pecuniary interest of the judge. A judge may serve as a reference or provide a letter of recommendation only if based on the judge's personal knowledge of the individual. These written communications may include the judge's title and be written on stationery that uses the judicial title.

C. Membership in Organizations

A judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion, national origin, or sexual orientation.

This Canon does not apply to membership in a religious organization or an official military organization of the United States. So long as membership does not violate Canon 4A, this Canon does not bar membership in a nonprofit youth organization.*

CANON 3

A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY AND DILIGENTLY

A. Judicial Duties in General

All of the judicial duties prescribed by law* shall take precedence over all other activities of every judge. In the performance of these duties, the following standards apply.

B. Adjudicative Responsibilities

(1) A judge shall hear and decide all matters assigned to the judge except those in which he or she is disqualified.

(2) A judge shall be faithful to the law* regardless of partisan interests, public clamor, or fear of criticism, and shall maintain professional competence in the law.*

(3) A judge shall require* order and decorum in proceedings before the judge.

(4) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and shall require* similar conduct of

lawyers and of all court staff and personnel* under the judge's direction and control.

(5) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status.

(6) A judge shall require* lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status against parties, witnesses, counsel, or others. This Canon does not preclude legitimate advocacy when race, sex, religion, national origin, disability, age, sexual orientation, socioeconomic status, or other similar factors are issues in the proceeding.

(7) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, full right to be heard according to law.* A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding, except as follows:

(a) A judge may obtain the advice of a disinterested expert on the law* applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond.

(b) A judge may consult with court personnel* whose function is to aid the judge in carrying out the judge's adjudicative responsibilities or with other judges.

(c) A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to mediate or settle matters pending before the judge.

(d) A judge may initiate ex parte communications, where circumstances require, for scheduling, administrative purposes, or emergencies that do not deal with substantive matters provided:

(i) the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication, and

(ii) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication and allows an opportunity to respond.

(e) A judge may initiate or consider any ex parte communication when expressly authorized by law* to do so.

(8) A judge shall dispose of all judicial matters fairly, promptly, and efficiently.

(9) A judge shall not make any public comment about a pending or impending proceeding in any court, and shall not make any nonpublic comment that might substantially interfere with a fair trial or hearing. The judge shall require* similar abstention on the part of court personnel* subject to the judge's direction and control. This Canon does not prohibit judges from making statements in the course of their official duties or from explaining for public information the procedures of the court, and does not apply to proceedings in which the judge is a litigant in a personal capacity. Other than cases in which the judge has personally participated, this Canon does not prohibit judges from discussing in legal education programs and materials, cases and issues pending in appellate courts. This education exemption does not apply to cases over which the judge has presided or to comments or discussions that might interfere with a fair hearing of the case.

(10) A judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding, but may express appreciation to jurors for their service to the judicial system and the community.

(11) A judge shall not disclose or use, for any purpose unrelated to judicial duties, nonpublic information* acquired in a judicial capacity.

C. Administrative Responsibilities

(1) A judge shall diligently discharge the judge's administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration, and shall cooperate with other judges and court officials in the administration of court business.

(2) A judge shall require* staff and court personnel* under the judge's direction and control to observe appropriate standards of conduct and to refrain from manifesting bias or prejudice based

upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status in the performance of their official duties.

(3) A judge with supervisory authority for the judicial performance of other judges shall take reasonable measures to ensure the prompt disposition of matters before them and the proper performance of their other judicial responsibilities.

(4) A judge shall not make unnecessary court appointments. A judge shall exercise the power of appointment impartially and on the basis of merit. A judge shall avoid nepotism and favoritism. A judge shall not approve compensation of appointees above the reasonable value of services rendered.

D. Disciplinary Responsibilities

(1) Whenever a judge has reliable information that another judge has violated any provision of the Code of Judicial Ethics, the judge shall take or initiate appropriate corrective action, which may include reporting the violation to the appropriate authority.*

(2) Whenever a judge has personal knowledge that a lawyer has violated any provision of the Rules of Professional Conduct, the judge shall take appropriate corrective action.

E. Disqualification

A judge shall disqualify himself or herself in any proceeding in which disqualification is required by law.* In all trial court proceedings, a judge shall disclose on the record information that the judge believes the parties or their lawyers might consider relevant to the question of disqualification, even if the judge believes there is no actual basis for disqualification.

CANON 4

A JUDGE SHALL SO CONDUCT THE JUDGE'S QUASI-JUDICIAL AND EXTRAJUDICIAL ACTIVITIES AS TO MINIMIZE THE RISK OF CONFLICT WITH JUDICIAL OBLIGATIONS

A. Extrajudicial Activities in General

A judge shall conduct all of the judge's extrajudicial activities so that they do not

- (1) cast reasonable doubt on the judge's capacity to act impartially;
- (2) demean the judicial office; or
- (3) interfere with the proper performance of judicial duties.

B. Quasi-judicial and Avocational Activities

A judge may speak, write, lecture, teach, and participate in activities concerning legal and nonlegal subject matters, subject to the requirements of this Code.

C. Governmental, Civic, or Charitable Activities

(1) A judge shall not appear at a public hearing or officially consult with an executive or legislative body or public official except on matters concerning the law,* the legal system, or the administration of justice or in matters involving the judge's private economic or personal interests.

(2) A judge shall not accept appointment to a governmental committee or commission or other governmental position that is concerned with issues of fact or policy on matters other than the improvement of the law,* the legal system, or the administration of justice. A judge may, however, serve in the military reserve or represent a national, state, or local government on ceremonial occasions or in connection with historical, educational, or cultural activities.

(3) Subject to the following limitations and the other requirements of this Code,

(a) a judge may serve as an officer, director, trustee, or nonlegal advisor of an organization or governmental agency devoted to the improvement of the law,* the legal system, or the administration of justice provided that such position does not constitute a public office within the meaning of the California Constitution, article VI, section 17;

(b) a judge may serve as an officer, director, trustee, or nonlegal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for profit;

(c) a judge shall not serve as an officer, director, trustee, or nonlegal advisor if it is likely that the organization

(i) will be engaged in judicial proceedings that would ordinarily come before the judge, or

(ii) will be engaged frequently in adversary proceedings in the court of which the judge is a member or in any court subject to the appellate jurisdiction of the court of which the judge is a member;

(d) a judge as an officer, director, trustee, or nonlegal advisor, or as a member or otherwise

(i) may assist such an organization in planning fund raising and may participate in the management and investment of the organization's funds, but shall not personally participate in the solicitation of funds or other fund-raising activities, except that a judge may privately solicit funds for such an organization from other judges (excluding court commissioners, referees, retired judges, and temporary judges*);

(ii) may make recommendations to public and private fund-granting organizations on projects and programs concerning the law,* the legal system, or the administration of justice;

(iii) shall not personally participate in membership solicitation if the solicitation might reasonably be perceived as coercive or if the membership solicitation is essentially a fund-raising mechanism, except as permitted in Canon 4C(3)(d)(i);

(iv) shall not permit the use of the prestige of his or her judicial office for fund raising or membership solicitation but may be a speaker, guest of honor, or recipient of an award for public or charitable service provided the judge does not personally solicit funds and complies with Canon 4A(1), (2), and (3).

D. Financial Activities

(1) A judge shall not engage in financial and business dealings that

(a) may reasonably be perceived to exploit the judge's judicial position, or

(b) involve the judge in frequent transactions or continuing business relationships with lawyers or other persons likely to appear before the court on which the judge serves.

(2) A judge may, subject to the requirements of this Code, hold and manage investments of the judge and members of the judge's family,* including real estate, and engage in other remunerative activities. A judge shall not participate in, nor permit the judge's name to be used in connection with, any business venture or com-

mercial advertising that indicates the judge's title or affiliation with the judiciary or otherwise lend the power or prestige of his or her office to promote a business or any commercial venture.

(3) A judge shall not serve as an officer, director, manager, or employee of a business affected with a public interest, including, without limitation, a financial institution, insurance company, or public utility.

(4) A judge shall manage personal investments and financial activities so as to minimize the necessity for disqualification. As soon as reasonably possible, a judge shall divest himself or herself of investments and other financial interests that would require frequent disqualification.

(5) Under no circumstance shall a judge accept a gift, bequest or favor if the donor is a party whose interests have come or are reasonably likely to come before the judge. A judge shall discourage members of the judge's family residing in the judge's household* from accepting similar benefits from parties who have come or are reasonably likely to come before the judge.

(6) A judge shall not accept and shall discourage members of the judge's family residing in the judge's household* from accepting a gift, bequest, favor, or loan from anyone except as hereinafter provided:

(a) any gift incidental to a public testimonial, books, tapes, and other resource materials supplied by publishers on a complimentary basis for official use, or an invitation to the judge and the judge's spouse or guest to attend a bar-related function or an activity devoted to the improvement of the law,* the legal system, or the administration of justice;

(b) advances or reimbursement for the reasonable cost of travel, transportation, lodging, and subsistence which is directly related to participation in any judicial, educational, civic, or governmental program, or bar-related function or activity, devoted to the improvement of the law,* the legal system, or the administration of justice;

(c) a gift, award, or benefit incident to the business, profession, or other separate activity of a spouse or other member of the judge's family residing in the judge's household,* including gifts, awards, and benefits for the use of both the spouse or other family member and the judge, provided the gift, award, or benefit could

not reasonably be perceived as intended to influence the judge in the performance of judicial duties;

(d) ordinary social hospitality;

(e) a gift for a special occasion from a relative or friend, if the gift is fairly commensurate with the occasion and the relationship;

(f) a gift, bequest, favor, or loan from a relative or close personal friend whose appearance or interest in a case would in any event require disqualification under Canon 3E;

(g) a loan in the regular course of business on the same terms generally available to persons who are not judges;

(h) a scholarship or fellowship awarded on the same terms and based on the same criteria applied to other applicants.

E. Fiduciary Activities

(1) A judge shall not serve as executor, administrator, or other personal representative, trustee, guardian, attorney in fact, or other fiduciary,* except for the estate, trust, or person of a member of the judge's family,* and then only if such service will not interfere with the proper performance of judicial duties.

(2) A judge shall not serve as a fiduciary* if it is likely that the judge as a fiduciary* will be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust, or minor or conservatee becomes engaged in contested proceedings in the court on which the judge serves or one under its appellate jurisdiction.

(3) The same restrictions on financial activities that apply to a judge personally also apply to the judge while acting in a fiduciary* capacity.

F. Service as Arbitrator or Mediator

A judge shall not act as an arbitrator or mediator or otherwise perform judicial functions in a private capacity unless expressly authorized by law.*

G. Practice of Law

A judge shall not practice law.

H. Compensation and Reimbursement

A judge may receive compensation and reimbursement of expenses as provided by law* for the extrajudicial activities permitted by this Code, if the source of such payments does not give

the appearance of influencing the judge's performance of judicial duties or otherwise give the appearance of impropriety.

(1) Compensation shall not exceed a reasonable amount nor shall it exceed what a person who is not a judge would receive for the same activity.

(2) Expense reimbursement shall be limited to the actual cost of travel, food, lodging, and other costs reasonably incurred by the judge and, where appropriate to the occasion, by the judge's spouse or guest. Any payment in excess of such an amount is compensation.

CANON 5

A JUDGE OR JUDICIAL CANDIDATE* SHALL REFRAIN FROM INAPPROPRIATE POLITICAL ACTIVITY

Judges are entitled to entertain their personal views on political questions. They are not required to surrender their rights or opinions as citizens. They shall, however, avoid political activity that may create the appearance of political bias or impropriety. Judicial independence and impartiality should dictate the conduct of judges and candidates* for judicial office.

A. Political Organizations

Judges and candidates* for judicial office shall not

- (1) act as leaders or hold any office in a political organization;*
- (2) make speeches for a political organization* or candidate* for nonjudicial office or publicly endorse or publicly oppose a candidate for nonjudicial office;
- (3) personally solicit funds for a political organization* or nonjudicial candidate;* or make contributions to a political party or political organization* or to a nonjudicial candidate in excess of five hundred dollars in any calendar year per political party or political organization* or candidate,* or in excess of an aggregate of one thousand dollars in any calendar year for all political parties or political organizations* or nonjudicial candidates.*

B. Conduct During Judicial Campaigns

A candidate* for election or appointment to judicial office shall not (1) make statements to the electorate or the appointing author-

ity that commit or appear to commit the candidate* with respect to cases, controversies, or issues that could come before the courts, or (2) knowingly misrepresent the identity, qualifications, present position, or any other fact concerning the candidate* or his or her opponent.

C. Speaking at Political Gatherings

Candidates* for judicial office may speak to political gatherings only on their own behalf or on behalf of another candidate for judicial office.

D. Measures to Improve the Law

Except as otherwise permitted in this Code, judges shall not engage in any political activity, other than in relation to measures concerning the improvement of the law,* the legal system, or the administration of justice.

CANON 6

COMPLIANCE WITH THE CODE OF JUDICIAL ETHICS

A. Judges

Anyone who is an officer of the state judicial system and who performs judicial functions, including, but not limited to, a magistrate, court commissioner, referee, court-appointed arbitrator, judge of the State Bar Court, temporary judge,* or special master, is a judge within the meaning of this Code. All judges shall comply with this Code except as provided below.

B. Retired Judge Serving in the Assigned Judges Program

A retired judge who has filed an application to serve on assignment, meets the eligibility requirements set by the Chief Justice for service, and has received an acknowledgment of participation in the assigned judges program shall comply with all provisions of this Code, except for the following:

- 4C(2) — Appointment to governmental positions
- 4D(2) — Participation in business entities and managing investments
- 4E — Fiduciary* activities

C. Retired Judge as Arbitrator or Mediator

A retired judge serving in the assigned judges program is not required to comply with Canon 4F of this Code relating to serving as an arbitrator or mediator, or performing judicial functions in a private capacity, except as otherwise provided in the Standards and Guidelines for Judges Serving on Assignment promulgated by the Chief Justice.

D. Temporary Judge,* Referee, or Court-appointed Arbitrator

A temporary judge,* a person serving as a referee pursuant to Code of Civil Procedure section 638 or 639, or a court-appointed arbitrator while actually serving in any of these capacities shall comply with the following provisions of this Code:

- 1 — Integrity and independence of the judiciary
- 2A, B, C — Public confidence, impartiality of the judiciary, and membership in organizations
- 3A, B — Judicial duties in general
Adjudicative responsibilities
- 3C(1), (2), (4) — Administrative responsibilities
- 3D, E — Disciplinary responsibilities
Disqualification
- 4A, B — Extrajudicial activities in general
- 4C(3)(c)(i) — Service as an officer, director, trustee, or nonlegal advisor
- 4C(1) — Appearance at public hearings
- 4C(3)(d)(iii), (iv) — Use of judicial office for fundraising by officer, director, trustee, or nonlegal advisor
- 4D(1)(a) — Financial and business dealings that exploit the judicial position
- 4D(5) — Gifts from those who have come or are reasonably likely to come before the judge
- 5B, C — Statements by candidates for judicial office
Speeches at political gatherings by candidates for judicial office

A person who has been a temporary judge,* referee, or court-appointed arbitrator shall not act as a lawyer in a proceeding in

which he or she has served as a judge or in any other proceeding related thereto except as otherwise permitted by Rule 3-310 of the Rules of Professional Conduct.

E. Judicial Candidate

A candidate* for judicial office shall comply with the provisions of Canon 5.

F. Time for Compliance

A person to whom this Code becomes applicable shall comply immediately with all provisions of this Code except Canons 4D(2) and 4F and shall comply with these Canons as soon as reasonably possible and shall do so in any event within a period of one year.
